

STATE OF NEW JERSEY
Board of Public Utilities

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Newark, NJ 07102
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PETITION OF BROADWING COMMUNICATIONS)	<u>TELECOMMUNICATIONS</u>
SERVICES INC. AND BROADWING)	
TELECOMMUNICATIONS INC. FOR APPROVAL)	ORDER OF APPROVAL
TO ENCUMBER CERTAIN LONG DISTANCE)	
TELECOMMUNICATIONS ASSETS LOCATED)	DOCKET NO: TF02060321
IN THE STATE OF NEW JERSEY)	

SERVICE LIST ATTACHED)

BY THE BOARD:

On June 5, 2002, a Verified Petition ("Petition") was filed with the Board of Public Utilities ("Board") by Broadwing Communications Services Inc. ("Broadwing-CSI") and Broadwing Telecommunications Inc. ("Broadwing Telecommunications") (collectively "the Petitioners"), seeking approval pursuant to N.J.S.A. 48:3-7, N.J.S.A. 48:3-9, and/or any other provisions deemed applicable by the Board, to encumber certain long distance telecommunications assets located in the State of New Jersey.

Broadwing-CSI and Broadwing Telecommunications maintain headquarters at 1122 Capital of Texas Highway South, Austin, Texas 78746. Broadwing Telecommunications (formerly known as Eclipse Telecommunications, Inc.), a Delaware corporation, is a wholly owned subsidiary of Broadwing-CSI. Broadwing-CSI (formerly known as IXC Communications Services, Inc.), a Delaware corporation, is a wholly owned subsidiary of Broadwing Communications Inc., which in turn is a wholly owned subsidiary of Broadwing Inc. (formerly known as Cincinnati Bell, Inc.), an Ohio Corporation. The Board approved the transfer of control of IXC Communications Services, Inc. and Eclipse Telecommunications, Inc. to Cincinnati Bell Inc. by Order dated November 4, 1999 in Joint Application for Approval of a Transfer of Control of IXC Communications Services, Inc. and Subsidiaries to Cincinnati Bell Inc., Docket No. TM99080528. Broadwing Inc. is a diversified telecommunication services holding company.

Broadwing-CSI received its authority to provide facilities-based telecommunications services in New Jersey on June 10, 1999, in Docket No. TE99030202, under the name IXC Communications Services, Inc. ("IXC-CSI"). As the Board was previously notified, IXC-CSI's name was later changed to Broadwing Communications Services Inc. Broadwing-CSI also provides interstate and international telecommunications pursuant to authority granted by the Federal Communications Commission. Broadwing-CSI functions as a wholesale provider to resellers and, thus, does not provide service directly to end-user customers.

Broadwing Telecommunications currently operates as a reseller of intrastate interexchange services in forty-eight states, including New Jersey. Broadwing Telecommunications also provides interstate and international telecommunications services pursuant to authority granted by the Federal Communications Commission. Petitioners referred Staff to the comprehensive information concerning their financial status, operations, management, and services set forth in their most recent Annual Report in the 2001 Form 10-K and first quarter 2002 Form 10Q, supplied to Staff as Exhibits A and B respectively.

The Petition of Broadwing-CSI and Broadwing Telecommunications requested authority to encumber certain long distance telecommunications assets in New Jersey pursuant to the terms of a preexisting Credit Agreement entered into by Cincinnati Bell, Inc. (now known as Broadwing Inc.) and Broadwing-CSI with lenders and other parties dated as of November 9, 1999, as amended and restated as of January 12, 2000 ("Credit Agreement"). These assets include: inventory, equipment, accounts, general intangibles, contract rights, instruments, investment property, all other personal property, and the proceeds (including insurance proceeds) and products thereof in whatever form the same may be.

Petitioners assert the encumbrances will not adversely affect the provision of telecommunications services in New Jersey. The Petitioners will continue to operate and remain the holders of their authorizations, and their day-to-day operations will not be impaired. Nor will the Petitioners' customers be adversely affected by the encumbrances. The Petitioners will continue to provide services to their current customers under pre-existing service arrangements.

Broadwing-CSI and Broadwing Telecommunications state that the proposed encumbrances are in accordance with law, for an appropriate purpose, and are in the public interest. Providing additional security as required by the Credit Agreement will enable the Petitioners to continue to benefit from the funds available under the Agreement. The continued availability of those funds will facilitate the Petitioners' ability to continue to provide the highest quality telecommunications services to customers in New Jersey and throughout the continental United States. Thus, establishing the proposed liens on certain long distance telecommunications assets in New Jersey will benefit the public interest by enabling the Petitioners to continue to serve their current and new customers in New Jersey with a full range of competitively priced services, thereby helping to ensure healthy competition in New Jersey's long distance marketplace.

The Credit Agreement provides that under certain circumstances, (namely, a reduction in the credit rating for the borrowers' debt) additional security must be furnished to the lender that results in the imposition of liens on subsidiary assets, including New Jersey long distance telecommunications assets. A review of the encumbrance documents, including the Credit Agreement, reveals that in exchange for the continuation of loans thus far totaling \$1.897 billion, the borrowers and their subsidiaries (including the Petitioners) are now required to provide extra security to the lenders. Specifically, under Section 5.01(j)(l) the borrowers and their subsidiaries within specific time frames must: (1) provide descriptions of their real and personal properties; (2) provide guarantees of obligations under the various underlying loan documents; (3) provide mortgages, pledges, assignments or security agreements securing payment of obligations under the various underlying loan documents and constituting liens on the real and personal property; and (4) take action necessary to vest valid liens and security interests in the real and personal properties subject to encumbrances.

As of June 30, 2002, the Credit Agreement consists of \$833 million in revolving credit, maturing in various amounts between 2002 and 2004, and \$571 million in term loans from banking

institutions and \$493 million from non-banking institutions, maturing in various amounts between 2002 and 2007. The interest rates charged on borrowings from the credit facility can range from 150 to 350 basis points above the London Interbank Offering Rate ("LIBOR"), and as of March 31, 2002 are between 275 and 325 basis points above LIBOR. The proceeds on borrowings from the credit facility shall be used to refinance existing debt, to fund capital expenditures, to pay transaction fees and expenses, to make equity contribution and inter-company loans, and for other general corporate purposes.

In discovery responses, Petitioners explained that there are additional assets consisting of leased sites and easements that are impacted by this transaction pursuant to the terms of the Credit Agreement, although in different manner. Section 5.01(j)(l)(3) establishes the requirement of providing mortgages, pledges, assignments and other security agreements consisting of liens on all real and personal properties securing payment of obligations to loan parties. Subsection 5.01(j)(l)(3)d., however, exempts from that requirement "any items of real property of CBI or such subsidiaries that has been irrevocably transferred under title documents satisfactory to the Agents to a Real Estate SPV under terms and conditions acceptable to the Agents (a "Transfer"), provided that if such real property is transferred out of a Real Estate SPV, such Real Estate SPV will be required to deliver mortgages, assignments, surveys (if requested by the Administrative Agent) and title insurance all in form and substance satisfactory to the Agents on such real property at or before the time of such transfer unless such real property is sold or otherwise transferred to a Person in a transaction permitted by Section 5.02(e)."

Petitioners advised that Broadwing Communications Services, Inc. has six lease sites and easements in New Jersey that will be transferred to a newly created special purpose Real Estate entity ("SPV"), as defined in Section 5.01(t), the equity interests of which will be pledged as security. Petitioners have no "owned" real property in New Jersey. Petitioners request authority to undertake the transfer of each equity interests on the six lease sites and easements in New Jersey to an SPV as part of the relief requested in this proceeding.

The Board notes that Board approval was not previously sought for the Credit Agreement. In discovery responses, Petitioners explained that the Credit Agreement was entered into in connection with the closing of the transaction whereby control of IXC Communications Services, Inc. (now Broadwing Communications Services Inc.) and its subsidiaries was transferred to Cincinnati Bell, Inc. (now Broadwing Inc.). The Board approved the merger transaction by Order dated November 4, 1999 in Docket No. TM99080528. The Board's merger Order authorized the parties to "take all actions contemplated by the [Agreement and Plan of Merger] or otherwise necessary to consummate the transaction." The parties' entry into the Credit Agreement dated as of November 9, 1999 as amended and restated as of January 12, 2000, was one such action. There was no encumbrance of long distance telecommunications assets located in the State of New Jersey at that time.

In order to permit Broadwing-CSI and Broadwing Telecommunications to encumber long distance telecommunications assets in New Jersey in such a manner and to transfer property to an SPV, Petitioners are required to obtain Board approval pursuant to N.J.S.A. 48:3-7. Without reaching the question of the applicability of N.J.S.A. 48:3-9, the Board, in any event, will determine whether the transaction is in accordance with law and for an approved purpose.

By letter dated August 1, 2002, the Division of the Ratepayer Advocate stated that it found no evidence that the proposed encumbrance would have adverse effects on customers or the general public, and recommended approval of the petition.

Accordingly, the Board, after investigation, having considered the records and exhibits submitted in this proceeding, being satisfied with the action proposed to be taken by Petitioners as indicated above and finding that the transactions are to be made in accordance with law and are in the public interest, and approving the purposes thereof, HEREBY APPROVES the Credit Agreement and HEREBY AUTHORIZES Broadwing CSI and Broadwing Telecommunications to encumber their long distance telecommunications assets located in New Jersey.

This Order is issued subject to the following Provisions:

1. This Order shall not be construed as directly or indirectly fixing, for any purpose whatsoever, any value of the tangible or intangible assets now owned or hereafter to be owned by Petitioners.
2. This Order shall not affect, or in any way limit the exercise of the authority of this Board, or of the State, in any future petitions or in any proceeding with respect to rates, franchises, services, financing accounting, capitalization, depreciation, or any other matters affecting the Petitioners.

3. Notwithstanding anything to the contrary in the documents executed pursuant to the financing arrangements approved hereunder or other supporting documents, a default or assignment under such agreement does not constitute automatic transfer of Petitioners' assets. Board approval must be sought pursuant to N.J.S.A. 48:1-1 et seq., where applicable.

DATED: September 5, 2002

BOARD OF PUBLIC UTILITIES
BY:

[SIGNED]
JEANNE M. FOX
PRESIDENT

[SIGNED]
FREDERICK F. BUTLER
COMMISSIONER

[SIGNED]
CAROL J. MURPHY
COMMISSIONER

[SIGNED]
CONNIE O. HUGHES
COMMISSIONER

ATTEST:

[SIGNED]
KRISTI IZZO
SECRETARY